

Exhibit E

Arnold & Porter

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December 14, 2018

VIA EMAIL

Douglas Hibbard
Office of Information Policy
United States Department of Justice
1425 New York Avenue, NW
Suite 1050
Washington, DC 20530-0001

Re: DOJ-2018-004190 (AG); DOJ-2018-004191 (DAG); DOJ 2018 004192 (OPA); DOJ-2018-004193 (OLA); DOJ-2018-04204 (AG); DOJ-2018-04206 (OLP); DOJ-2018-04207 (OPA); DOJ-2018-04208 (OLA)

Dear Mr. Hibbard:

I write on behalf of our client Everytown for Gun Safety Support Fund (“Everytown”) regarding multiple outstanding Freedom of Information Act (“FOIA”) requests that Everytown sent to the Department of Justice (“DOJ”) on April 16 and 17, 2018 (“the Requests”). Everytown is an independent, non-partisan 501(c)(3) organization dedicated to understanding and reducing gun violence in America by conducting original research, developing evidence-based policies, and communicating this knowledge to the American public and policymakers. Consistent with its mission, Everytown seeks information concerning how federal agencies implement, or fail to implement, programs aimed at reducing gun violence, and how federal agencies communicate with the gun industry about gun violence. Because Everytown has yet to receive any requested records, our client has concerns about your agency’s compliance with its obligations under FOIA, whose “basic purpose . . . is to open agency action to the light of public scrutiny.” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 372 (1976).

I. The April 16, 2018 Requests and Initial Responses

By letters dated April 16, 2018, Everytown, through its Deputy Director of Affirmative Litigation Alla Lefkowitz, requested records showing communications and meetings between DOJ officials and the National Rifle Association or National Shooting Sports Foundation. The request was limited to records dated on or after February 14, 2018, *i.e.*, the date of the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida. This request was composed of four requests to different DOJ Offices: the Office of the Attorney General (“OAG”), the Office of the Deputy Attorney General

Arnold&Porter

December 14, 2018

Page 2

(“ODAG”), the Office of Public Affairs (“OPA”), and the Office of Legislative Affairs (“OLA”) (Attachments A-D hereto).¹

By letter dated May 14, 2018, Kim Kochurka responded on behalf of DOJ, indicating that the DOJ Office of Information Policy assigned these requests the numbers DOJ-2018-004190 (AG), DOJ-2018-004191 (DAG), DOJ 2018 004192 (PAO), and DOJ-2018-004193 (OLA), respectively (Attachment E hereto). The letter assigned Everytown’s request to the “complex track,” citing “unusual circumstances” because the request would require “a search in and/or consultation with other Offices.”

II. The April 17, 2018 Requests and Initial Responses

By letters dated April 17, 2018, Everytown, again through Ms. Lefkowitz, requested (1) records relating to gun violence initiatives announced on January 4, 2016 by the White House Office of the Press Secretary; , , as well as relating to the Gun Safety Technology Challenge (collectively, “the Gun Violence Initiatives”); and (3) communications between DOJ officials and certain gun industry organizations, including the National Rifle Association or National Shooting Sports Foundation, relating to personalized gun or user-authorized technology or the Gun Violence Initiatives. The requests were made to the AG, OPA, OLA, and the Office of Legal Policy (“OLP”) (Attachments F-I hereto).

By letter dated May 16, 2018, Ms. Kochurka responded on behalf of DOJ, indicating that the April 17 requests were assigned the numbers DOJ-2018-04204 (AG), DOJ-2018-04206 (OLP), DOJ-2018-04207 (PAO), and DOJ-2018-04208 (OLA), respectively (Attachment J hereto). The response assigned the requests to the “complex track,” citing “unusual circumstances” because the request would require “a search in and/or consultation with other Offices.”

III. Subsequent Communications

On August 9, 2018, Ms. Lefkowitz called DOJ, was transferred to the analyst or analysts responsible for the April 16 and April 17 requests, and left voicemails asking for updates on the requests. On August 28, 2018, Ellie Arbeit, an Everytown researcher, left voicemails asking for updates on the Requests.

¹ On April 16, 2018, Everytown sent a similar FOIA request to the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”). ATF assigned the request number 2018-0861. Everytown has not received any records in response to the request.

Arnold & Porter

December 14, 2018

Page 3

On November 8, 2018, you spoke by telephone with Aaron Esty, Counsel at Everytown, and explained that a software problem was preventing DOJ from performing electronic searches, resulting in a long backlog of unaddressed FOIA requests. We understand your view to be that it will take one year (or more) to search for and produce emails responsive to Everytown's FOIA requests. We further understand that you indicated to Mr. Esty that DOJ can separately search the Departmental Executive Secretariat ("DOJ ExecSec") for records from OAG, ODAG, and OLA, and that Everytown had two mutually exclusive options: (1) request searches of DOJ ExecSec to see if the results are sufficient, or (2) continue proceeding with all aspects of the Requests, which likely would not produce any email results for at least one year.

By email dated November 16, 2018, Mr. Esty expressed his appreciation for an earlier production from DOJ ExecSec, but stated that this alone would not adequately respond to Everytown's request, which was not limited to documents held by DOJ ExecSec. Mr. Esty further stated that Everytown maintains its original Requests and preserves any right to appeal or challenge their processing. We understand that DOJ has not responded to Everytown's November 16 email.

Everytown would be willing to discuss narrowing the Requests by limiting the list of custodians to be searched, limiting the use of search terms, limiting the timeframe of the Requests, or accepting rolling productions as records are approved for disclosure.

IV. Request for a Revised Production Schedule

Despite our client's repeated inquiries and DOJ's obligation to respond to a FOIA request within 20 days, *see* 5 U.S.C. § 552(a)(6)(A)(i), DOJ has produced nothing in response to Everytown's FOIA Requests from eight months ago. We are particularly troubled by the suggestion that DOJ might not be able to comply with these Requests *until 2020*. Furthermore, the concept of a software problem that impedes DOJ's ability to search emails for FOIA purposes seems hard to square with the fact that desktop-based email programs like Microsoft Outlook could easily be used to search for records responsive to Everytown's narrowly tailored request. For example, appropriate custodians need simply enter the unique terms "NRA" or "NSSF" into the "search" box of their computers' email software.

In short, we request that DOJ promptly comply with its FOIA obligations by producing the requested information. If DOJ is willing to propose a reasonable and prompt schedule for releasing the requested documents, we respectfully request that you share that schedule with us by December 31, 2018. Everytown continues to reserve all rights to pursue any available legal remedies.

Arnold&Porter

December 14, 2018

Page 4

Respectfully,

/s/ Alexander Shaknes

Alexander Shaknes

Attachments

cc: Alla Lefkowitz, Esq., Everytown - Deputy Director of Affirmative Litigation
Aaron Esty, Esq., Everytown - Counsel
Darryl Webb, ATF - FOIA Public Liaison
Johnny Rosner, ATF - FOIA Public Liaison